

SEC. 9501. PARTICIPATION BY PRIVATE SCHOOL CHILDREN AND TEACHERS.

(a) PRIVATE SCHOOL PARTICIPATION-

(1) IN GENERAL- Except as otherwise provided in this Act, to the extent consistent with the number of eligible children in areas served by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or another entity receiving financial assistance under a program specified in subsection (b), who are enrolled in private elementary schools and secondary schools in areas served by such agency, consortium, or entity, the agency, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.

(2) SECULAR, NEUTRAL, AND NONIDEOLOGICAL SERVICES OR BENEFITS- Educational services or other benefits, including materials and equipment, provided under this section, shall be secular, neutral, and nonideological.

(3) SPECIAL RULE- Educational services and other benefits provided under this section for private school children, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school children, teachers, and other educational personnel participating in the program and shall be provided in a timely manner.

(4) EXPENDITURES- Expenditures for educational services and other benefits provided under this section for eligible private school children, their teachers, and other educational personnel serving those children shall be equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children.

(5) PROVISION OF SERVICES- An agency, consortium, or entity described in subsection (a)(1) of this section may provide those services directly or through contracts with public and private agencies, organizations, and institutions.

(b) APPLICABILITY-

(1) IN GENERAL- This section applies to programs under —

(A) subparts 1 and 3 of part B of title I;

(B) part C of title I;

(C) part A of title II, to the extent provided in paragraph (3);

(D) part B of title II;

(E) part D of title II;

(F) part A of title III;

(G) part A of title IV; and

(H) part B of title IV.

(2) DEFINITION- For the purpose of this section, the term eligible children' means children eligible for services under a program described in paragraph (1).

(3) APPLICATION- (A) Except as provided in subparagraph (B), this subpart, including subsection (a)(4), applies to funds awarded to a local educational agency under part A of title II only to the extent that the local educational agency uses funds under that part to provide professional development to teachers and others.

(B) Subject to subparagraph (A), the share of the local educational agency's subgrant under part A of title II that is used for professional development and subject to a determination of equitable expenditures under subsection (a)(4) shall not be less than the aggregate share of that agency's awards that were used for professional development for fiscal year 2001 under section 2203(1)(B) (as such section was in effect on the day preceding the date of enactment of the No Child Left Behind Act of 2001) and section 306 of the Department of Education Appropriations Act, 2001.

(c) CONSULTATION-

(1) IN GENERAL- To ensure timely and meaningful consultation, a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity shall consult with appropriate private school officials during the design and development of the programs under this Act, on issues such as —

(A) how the children's needs will be identified;

(B) what services will be offered;

(C) how, where, and by whom the services will be provided;

(D) how the services will be assessed and how the results of the assessment will be used to improve those services;

(E) the size and scope of the equitable services to be provided to the eligible private school children, teachers, and other educational personnel and the amount of funds available for those services; and

(F) how and when the agency, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers.

(2) DISAGREEMENT- If the agency, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the agency, consortium, or entity shall provide to the private school officials a written explanation of the reasons why the local educational agency has chosen not to use a contractor.

(3) TIMING- The consultation required by paragraph (1) shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school

children, teachers, and other educational personnel to participate in programs under this Act, and shall continue throughout the implementation and assessment of activities under this section.

(4) DISCUSSION REQUIRED- The consultation required by paragraph (1) shall include a discussion of service delivery mechanisms that the agency, consortium, or entity could use to provide equitable services to eligible private school children, teachers, administrators, and other staff.

(d) PUBLIC CONTROL OF FUNDS-

(1) IN GENERAL- The control of funds used to provide services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

(2) PROVISION OF SERVICES-

(A) IN GENERAL- The provision of services under this section shall be provided —

(i) by employees of a public agency; or

(ii) through contract by the public agency with an individual, association, agency, organization, or other entity.

(B) INDEPENDENCE; PUBLIC AGENCY- In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the public agency.

(C) COMMINGLING OF FUNDS PROHIBITED- Funds used to provide services under this section shall not be commingled with non-Federal funds.